No. 81-1859

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S OPENING BRIEF ON MERITS

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QUESTION PRESENTED FOR REVIEW

Whether the police may search a lawfully arrested individual and a purse he is carrying, without a warrant, as part of a normal booking procedure following a lawful arrest at another location.

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October Term, 1982

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PEOPLE OF THE STATE OF ILLINOIS,

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v.

RALPH LAFAYETTE,

Respondent.

On Writ Of Certiorari To The Appellate Court Of Illinois, Third Judicial District

PETITIONER'S OPENING BRIEF ON MERITS

OPINION BELOW

The decision of the Appellate Court of Illinois in this case is reported as *People v. Lafayette*, 99 Ill.App.3d 830, 425 N.E.2d 1383 (3d Dist. 1981). The order of the Illinois Supreme Court denying leave to appeal is unreported. The order of the Circuit Court of Kankakee County granting defendant's motion to suppress is unreported also.

JURISDICTION OF THE COURT

The opinion of the Appellate Court of Illinois was filed on September 10, 1982. The Illinois Supreme Court rendered its order denying leave to appeal on February 2, 1982. The petition for certiorari was filed within sixty days of that order. This Court granted certiorari on November 8, 1982.

This Court's jurisdiction rests on 28 U.S.C. Sec. 1257(3), because throughout the state court proceedings in this matter, respondent has asserted an alleged violation of his rights under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV, provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, provides that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or im-

munities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

On September 1, 1980, the City of Kankakee police lawfully arrested defendant-respondent, Ralph Lafayette, for disturbing the peace. The manager of the Town Cinema in Kankakee had called the police and asked that they remove Lafayette for causing a disturbance in the theater lobby. When the police arrived, Lafayette continued yelling at the theater manager inside the lobby. Accordingly, the police advised him that he was under arrest for disturbing the peace and took him into custody. (A. at 11).

Respondent wore a purse-type shoulder bag at the time of his arrest. The police did not remove the shoulder bag and conducted no search or pat down of respondent and his purse at the theater. The arresting officer, Sergeant Mitzner, handcuffed respondent, put him in the squad car and took him to the Kankakee police station. (A. at 12).

When they arrived at the station, Sergeant Mitzner took respondent directly to the booking room and removed the handcuffs. Respondent decided he would not make bond and instead would spend the night in jail. In accordance with standard booking procedures, the police asked him to empty his pockets, which he did willingly. They then instructed him to remove his street clothing so

he could be taken to his cell. (A. at 14, 16). Respondent then took the purse off his shoulder, placed it on the counter and removed a pack of cigarettes from it. After respondent removed the cigarettes, Sergeant Mitzner patted the outside of the purse and felt something remaining inside. The officer then reached in the purse and removed ten small black pills wrapped inside the plastic wrap of a cigarette package. (A. at 14). A Valtox test performed on the pills determined that they were amphetamines. The police then charged respondent with possession of a controlled substance. The Kankakee County grand jury indicted him on that charge. (A. at 2).

The defendant filed a pre-trial motion to suppress the amphetamines as evidence. (A. at 4). He argued that the warrantless search of his purse during police booking procedures following his valid arrest violated his rights under the fourth and fourteenth amendments. At the suppression hearing, the State presented evidence detailing the events of the arrest and booking and argued simply that there was no, "constitutional bar to looking into [the] bag." (A. at 18). In the State's trial court brief in opposition to the motion to suppress, it argued that the search was a valid inventory (A. at 20, 21) and lawful as a "full search of the person." (A. at 20). Without enunciating the reasons for its decision, the Circuit Court of Kankakee County granted the motion to suppress. (A. at 22). The People of the State of Illinois appealed the suppression order.

On appeal, the State argued that the warrantless stationhouse search of the lawfully arrested defendant was valid on two grounds. First, the State argued that the search was valid as incident to a lawful custodial arrest. Second, it contended that the search constituted a valid inventory of the personal effects of a lawfully detained

defendant. The Appellate Court of Illinois rejected the State's arguments and affirmed the decision of the trial court.

The Appellate Court concluded that the State failed to raise the argument that the search was valid as incident to a lawful arrest at the trial level. Accordingly, the court held that the State waived the argument on appeal. (A. at 27). The court noted, however, that even if the argument was raised, the search violated the fourth amendment. It reasoned that the search went beyond a search of the accused and his clothing, and the police did not suspect that the purse contained weapons or evidence. (A. at 28). The court also held that the search did not constitute a valid inventory of defendant's possessions. The court reasoned that under the circumstances, the defendant's expectation of privacy in the purse outweighed the interests of police safety, preservation of the defendant's property and protection of the police from claims of lost or stolen property. (A. at 30).

The Illinois Supreme Court denied the State leave to appeal. (A. at 31). This case now comes before this Court on writ of certiorari.

SUMMARY OF ARGUMENT

Police may conduct a warrantless search of an individual under lawful arrest. The search of an individual under lawful arrest has been traditionally deemed reasonable and therefore, an exception to the warrant requirement. It is uncontested that respondent was under lawful arrest. Accordingly, the search of his person and personal effects was reasonable and did not violate the fourth amendment.

The authority to search, established by a lawful arrest, provides the rationale for two separate types of searches. First, it provides the basis for the general search incident to arrest. Second, it provides the basis for the inventory search of an arrestee's personal effects. In this case, however, this Court need not draw distinctions between the two types of searches. Because the fact of lawful arrest establishes the authority to search in both instances, an inventory search may be justified upon the additional ground that it is a search incident to arrest. A custodial arrest based on probable cause is a reasonable intrusion under the fourth amendment. Once a court determines that the arrest is lawful, a search resulting from that arrest requires no additional justification. *United States v. Robinson*, 414 U.S. 218 (1973). Accordingly, the search of respondent after his arrest was reasonable and did not violate the fourth amendment.

The Appellate Court of Illinois erred in holding that the search of respondent was unreasonable and not a valid search incident to arrest. In both the trial and appellate courts, the State argued that the search constituted a proper search incident to arrest, as well as a valid inventory. The State neither made contrary assertions

nor acquiesced in contrary findings by the lower court. Thus, the State properly raised the issue of search incident to arrest and did not waive that question on appeal. *Steagald v. United States*, 451 U.S. 204 (1981).

A search incident to arrest may occur at the police station as well as at the place of arrest. *United States v. Edwards*, 415 U.S. 800 (1974). It is reasonable for police to examine and hold as evidence those personal effects of an arrestee that they already have in their custody as the result of a lawful arrest. A search incident to arrest may include the examination of containers that an arrestee is wearing or carrying at the time of arrest. *United States v. Robinson*, *supra*. The police need not suspect that an arrestee is concealing a weapon or contraband. *Id.* The lawful arrest establishes the authority to search. No further justification is needed. Thus, the search of respondent after his arrest was reasonable and a valid search incident to arrest.

The Appellate Court of Illinois erred in holding that the search of respondent was unreasonable and not a valid inventory. It is customary for an inventory to involve a complete item-by-item examination of everything in possession of the arrestee at the place of detention. This may include inspection of his pockets and other containers in his possession. The authority to conduct an inventory, like the authority to conduct a search incident to arrest, derives from the fact of lawful arrest. Although the arrest establishes the authority to inventory, four generally recognized interests are advanced by such a search: (1) protection of an arrestee's property while he is in jail; (2) protection of police from false claims of stolen or lost goods; (3) protection of the security of the police and detention facility; and (4) ascertainment of the identity of the arrestee. The inventory of respondent's personal effects protected each of those interests.

The Appellate Court of Illinois incorrectly held that a full inventory violates the fourth amendment if the interests advanced by an inventory could be protected without a complete item-by-item search of an arrestee's personal effects. This analysis fails to recognize that the validity of a search depends upon whether the police acted reasonably and had the authority to search; and not on whether a particular search fulfills the interests traditionally advanced by that type of search. *Id.* The lawful arrest of respondent authorized the inventory of his personal effects. No additional justification for the inventory was needed.

The holding of the Appellate Court of Illinois, moreover, imposes unrealistic requirements on the police officers who must conduct inventories daily. It requires that police engage in a free form balancing of complex issues to determine whether each inventory they conduct protects the interests traditionally advanced by inventories. In this case, the police maintained a good faith belief that they acted reasonably and within the law in applying the standard inventory procedure to respondent who was under lawful arrest. The purpose of the exclusionary rule is to deter unlawful police conduct. That purpose is not served when a court suppresses evidence obtained through a reasonable standard inventory conducted by police who maintained a good faith belief that they acted reasonably and within the law.

Respondent was under lawful arrest. Accordingly, a search of him and his personal effects at the police station was reasonable. The search, therefore, did not violate the fourth amendment.

ARGUMENT

I.

POLICE MAY CONDUCT THE WARRANTLESS SEARCH OF AN INDIVIDUAL UNDER LAWFUL ARREST.

The decision of the Appellate Court of Illinois affirming the trial court's suppression of the narcotics seized from respondent was incorrect. The search of respondent's purse required no warrant because it was undertaken in accordance with standard police procedure, while respondent was in police custody after a valid arrest in a public place.

"The fourth amendment does not denounce all searches and seizures, but only such as are unreasonable." *Carrol v. United States*, 267 U.S. 132, 147 (1923). The "fundamental inquiry in considering Fourth Amendment issues is whether a search is reasonable under all the circumstances." *United States v. Chadwick*, 433 U.S. 1, 9 (1977) *citing*, *Cooper v. California*, 386 U.S. 58 (1967). Accordingly, "[t]he prevailing rule under the Fourth Amendment that searches and seizures may not be made without a warrant is subject to various exceptions." *United States v. Edwards*, 415 U.S. 800, 802 (1974).

The search of a person under lawful police arrest has been traditionally deemed reasonable and, therefore, an exception to the warrant requirement. *United States v. Robinson*, 414 U.S. 218 (1973); *Chimel v. California*, 395 U.S. 752 (1969); *Weeks v. United States*, 232 U.S. 383 (1914). In *United States v. Robinson*, this Court settled any doubts concerning the reasonableness of the warrantless search of a person under lawful custodial arrest. The defendant in *Robinson* was arrested for operating a

motor vehicle without a valid permit. The arresting police officer performed a standard post-arrest frisk and felt something unusual in the defendant's coat pocket. The officer reached in the pocket and discovered a crumpled cigarette package which contained heroin filled capsules. In upholding the warrantless search of the defendant, this Court stated:

> It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

414 U.S. at 235.

The authority to search, established by a lawful arrest, provides the rationale for two separate traditional types of custodial searches. First, it provides the basis for the general search incident to arrest. *United States v. Robinson, supra.* Second, it provides the basis for the inventory search of an arrestee's personal effects. *South Dakota v. Opperman,* 428 U.S. 364 (1976). The warrantless search of respondent is justified as either type of search.

This Court, however, need not draw distinctions between the two types of searches because the fact of lawful arrest establishes the authority to search in both instances. A search of a person under lawful arrest is a reasonable search. Noting that the fact of lawful arrest justifies the search of an arrestee, Professor LaFave has stated, "a pre-incarceration inventory may be justified upon the additional ground that it is a search incident to arrest." 2 W. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment,* 309 (1978).

Respondent was lawfully arrested. The lawful arrest established the authority of the Kankakee police to search

him. Accordingly, the search of respondent was reasonable and did not violate the fourth amendment.

II.

THE SEARCH OF RESPONDENT WHILE HE WAS UNDER LAWFUL ARREST CONSTITUTED A VALID SEARCH INCIDENT TO ARREST.

Police may search a lawfully arrested individual and his personal effects at the police station. The Appellate Court of Illinois erred in finding that the search of respondent was not a valid search incident to arrest.

A. The State Properly Argued In The Lower Court That The Search Constituted A Valid Search Incident To Arrest.

In both the trial and appellate courts, the State argued that the search of respondent constituted a proper search incident to arrest, as well as a valid inventory. The Appellate Court of Illinois erred in holding that at the trial level, the State failed to raise the argument that the search was a proper search incident to arrest and therefore, it waived that issue on appeal.

In *Steagald v. United States*, 451 U.S. 204 (1981), this Court set forth the standard for determining whether the government has waived an issue on appeal. The case involved the search of a home by government agents. The agents lacked a warrant for the search of the home but entered and searched pursuant to an arrest warrant for an individual they suspected was in the home. Although the agents failed to find the subject of the warrant, they found contraband which led to the narcotics arrest and indictment of the defendant, the owner of the home. The defendant moved to suppress the evidence claiming that the government's warrantless search violated the fourth amendment. The trial court denied his motion. In the

trial court proceedings, the government asserted that the house was directly connected with the defendant. Moreover, the government acquiesced in statements by the lower court which characterized the search as one of the defendant's residence.

On appeal to this Court, the government argued that the defendant lacked standing to contest the search of the home because the record below did not clearly show that he had a possessory interest in the home. The Court held that the government waived that issue on appeal. The Court reasoned that the government acknowledged the defendant's expectation of privacy when it asserted the house was connected with the defendant and acquiesced in the lower court's characterization of the home. It stated that the government waives an issue, "when it has made contrary assertions in the courts below, when it has acquiesced in contrary findings by those courts, or when it has failed to raise such questions in a timely fashion during the litigation." *Id.* at 209.

In *People v. Keller*, Ill. Sup. Ct. No. 55745 (1982), the Illinois Supreme Court followed *Steagald* in determining the question of waiver of an issue on appeal. Like *Steagald*, *Keller* involved the government's argument on appeal that the defendants lacked standing to challenge the validity of a search. The court applied the test enunciated in *Steagald* and concluded that no waiver occurred.

The Appellate Court of Illinois ignored the holding and analysis of *Steagald* in determining that the State waived the issue of search incident to arrest in this case. The State argued at both the trial and appellate levels that the search was valid as incident to arrest. It neither made contrary assertions nor acquiesced in contrary findings by the lower court. At the suppression hearing, the State presented evidence detailing the arrest and booking. At

the close of the hearing, the Kankakee County Assistant State's Attorney summarized the State's view of the case by stating, "[t]he question is is there a constitutional bar to looking into that bag." (A. at 18).

After the hearing, but before the court's decision on the motion to suppress, the State submitted a brief in opposition to the motion. In that brief the State argued:

> Illinois statute permits a search of the person pursuant to a lawful arrest. Section 108-1 of Chapter 38 of Illinois Revised Statutes. [sic] This search may be a full search of the person. *People v. Jones*, 56 Ill. App.3d 414, 371 N.E.2d 1096 (1st Dist. 1977). *U.S. v. Robinson*, 414 U.S. 218, 38 L. Ed.2d 427 (1973).

(A. at 20). Thus, the State properly raised the issue of whether the search constituted a valid search incident to arrest in a timely fashion at the trial level. In support of its argument, the State cited *United States v. Robinson*, the leading authority supporting such a search.

The State also argued that the search constituted a valid inventory. That argument, however, does not contradict the argument that the search was proper as incident to arrest because, "a pre-incarceration inventory may be justified upon the additional ground that it is a search incident to arrest." 2 W. LaFave, *supra* at 309. Accordingly, the State has consistently argued that the search constituted a valid search incident to arrest. Thus, the issue was not waived on appeal.

Moreover, the Appellate Court of Illinois discussed the question of search incident to arrest. Thus, this Court may decide that issue. *Jenkins v. Georgia*, 418 U.S. 153 (1974); *Raley v. Ohio*, 360 U.S. 423 (1959).

B. The Search Incident To Arrest Was Appropriate At The Police Station As Well As At The Place Of Arrest.

A valid search incident to arrest may be conducted at the place of detention as well as at the place of arrest. Circumstances surrounding an arrest may result in the delay of a full search. "A police officer's determination as to how and where to search the person of a suspect who he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search." *United States v. Robinson*, 414 U.S. at 235. In *United States v. Edwards*, this Court stated:

> It is also plain that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention. If need be, *Abel v. United States*, 362 U.S. 217, 4 L.Ed.2d 668, 80 S.Ct. 683 (1960), settled this question.

415 U.S. at 803.

In *Abel v. United States*, the Court upheld the delayed search of a defendant's belongings subsequent to an administrative arrest. Federal agents arrested the defendant at his hotel and allowed him to bring along whatever belongings he wished to take with him. The agents then searched those belongings when they arrived at the place of detention. The defendant argued that the search violated the fourth amendment because it was remote from the time and place of the arrest. This Court stated that because the items searched were subject to search at the time of arrest, it:

> [did] not think it significantly different, when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to

> the place of detention has additional justifications, similar to those which justify a search of the person of one who is arrested.

362 U.S. at 239.

United States v. Edwards follows this authority. *Edwards* involved the full search of a criminal defendant's clothing at the city jail approximately 10 hours after his arrest. The police believed the defendant's clothing might contain evidence of the crime. The defendant argued that the police could not search his clothing after completion of the booking process and the mechanics of the arrest. This Court held that, "[w]ith or without probable cause, the authorities were entitled at that point not only to search the defendant's clothing but also to take it from him and keep it in official custody." 415 U.S. at 804. The Court reasoned that, "it is difficult to perceive what is unreasonable about the police examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as a result of a lawful arrest." *Id.* at 777.

Similarly, in this case, it is difficult to perceive what is unreasonable about the Kankakee police examining the personal effects of respondent during the standard booking procedure following his lawful arrest. Respondent maintained control over the items in his pockets and his purse until he was searched in the course of the standard booking procedure. The police searched only items immediately associated with the person of respondent after he was already in their custody as a result of a lawful arrest. Thus, the stationhouse search of respondent constituted a valid search incident to arrest.

C. The Police Could Search Respondent And His Purse Without Suspecting That He Was Concealing A Weapon Or Contraband After Lawful Arrest.

Police need no independent justification to conduct a full search incident to a lawful custodial arrest. In this case, the Appellate Court of Illinois incorrectly determined that independent justification for the search was needed. The court stated that once an accused has been "secured," absent exigent circumstances, an officer may not conduct a full search if he does not believe the arrestee is harboring a weapon or contraband. (A. at 28). This analysis conflicts with the holdings of this Court.

The traditional rationale for allowing a search incident to lawful arrest includes concerns for police safety and the discovery of evidence. As this Court stated in *Angnello v. United States*, 269 U.S. 20 (1925):

> The right without a search warrant contemporaneously to search persons lawfully arrested while committing a crime and to search the place where the arrest is made in order to find and seize things connected with the crime as the fruits or as the means by which it was committed, as well as weapons and other things to effect an escape from custody is not to be doubted.

Id. at 30. *See also, Weeks v. United States*, 232 U.S. at 392 (police may search an arrestee to "seize fruits or evidences of crime") *citing*, 1 Bishop on Criminal Procedure Sec. 211; Wharton, *Criminal Pleading and Practice*, 8th ed. Sec. 60; *Dillon v. O'Brian and Davis*, 16 Cox CC 245.

The Appellate Court of Illinois, however, erred in concluding that concerns for police safety and the seizure of evidence are the only justification for a search incident to arrest. Those concerns are merely interests advanced by such a search and not the ultimate authority allowing it. In *United States v. Robinson*, this Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and discover evidence, does not depend upon what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification.

414 U.S. at 235. In upholding the search of the defendant in *Robinson*, the Court concluded, "it is of no moment that [police officer] Jenks did not indicate any subjective fear or that he did not himself suspect that respondent was armed." *Id.* at 236.

Similarly, in this case, it is of no moment that Sergeant Mitzner did not indicate any subjective fear or that he did not himself suspect that the defendant was armed or concealing contraband. Respondent's lawful arrest justified the search. The police needed no probable cause or independent justification to search respondent's purse and seize the illegal narcotics he possessed.

D. Respondent's Purse Was A Container Subject To Search Incident To Arrest.

A search incident to arrest may include the examination of containers that an arrestee is wearing or carrying at the time of the arrest. Respondent wore a purse fastened with a shoulder strap at the time of his arrest. He continued wearing the purse while handcuffed in the police car. The police searched the purse only when they fully searched respondent's person at the police station when it was determined he would spend the night in jail. Accordingly, the search of the purse was part of the valid search incident to arrest.

This Court has traditionally upheld the search of containers in the possession of a defendant at the time of arrest. "A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents." *United States v. Ross*, 50 U.S.L.W. 4580, 4588 (June 2, 1982). In *United States v. Robinson*, the Court upheld the search of two containers in the possession of the defendant. Although the defendant was arrested for driving without a valid permit, the police officer searched inside the defendant's pocket. The officer then searched inside a cigarette package found inside the pocket. Without discussing the propriety of searching such containers, the Court upheld the search. Accordingly, the fourth amendment does not prevent the search of containers in a defendant's possession at the time of arrest.

This Court's decision in *United States v. Chadwick*, 433 U.S. 1 (1977), does not change this rule. *Chadwick* involved the search of a defendant arrested for drug trafficking. At the time of the arrest, government agents seized a double-locked footlocker from the defendant's automobile trunk. Without securing a search warrant, the agents opened the footlocker at the Federal Building one and a half hours after the arrest. The footlocker remained in the exclusive control of the agents from the time of the arrest until the time it was opened.

The defendant argued that the warrantless search violated the fourth amendment. The government contended, "that the Fourth Amendment Warrant Clause protects only interests traditionally identified with the home." *Id.* at 6. The government did not argue that the search was valid as incident to arrest but instead argued only the, "extreme view of the Fourth Amendment that would restrict the protection of the Warrant Clause to

private dwellings and a few other 'high privacy' areas." *Id.* at 17. (Blackmun, J., dissenting).

The Court held that the protections for the warrant clause extend beyond the confines of the home. It, therefore, found that the search of the double-locked footlocker violated the fourth amendment.

This case differs from *Chadwick* both in its facts and in the legal arguments advanced. The government in *Chadwick* advanced an extreme interpretation of the fourth amendment, arguing that the warrant clause does not apply outside the home. In contrast, petitioner in this case advances a traditional interpretation of the fourth amendment, arguing that a lawful arrest gives police the authority to conduct a full search of the arrestee. The container searched in *Chadwick* was a double-locked footlocker which was not in the defendant's immediate possession at the time of the arrest or the time of the search. In contrast, the container searched in this case was simply a purse worn by respondent at the time of the arrest. Moreover, respondent continued wearing the purse until the time of the search when he placed it on the counter in front of the officer who performed the search. Thus, *Chadwick* is distinguishable from the case at bar.

Cases following *Chadwick* indicate that containers in a defendant's immediate possession may be searched subsequent to a lawful arrest. *New York v. Belton*, 453 U.S. 454 (1981), this Court's most recent discussion of the search of a container in the possession of an arrestee, arose in the context of a search of an arrested automobile occupant. Although this Court has traditionally drawn a distinction between the highway search of an automobile and other types of searches, the Court's reasoning and holding rest on the rationale of search incident to arrest rather than

the "automobile exception." *See, Carroll v. United States*, 267 U.S. 132 (1925).

In *Belton*, this Court held that police may search containers found within the passenger compartment of an automobile, subsequent to the lawful arrest of its occupants. The defendant and three other men were lawfully arrested for possession of marijuana. The police patted down each of the men and then placed them in different areas of the highway so they would not be in contact with each other. The officer then searched the passenger compartment and found a jacket on the back seat. He unzipped one of the pockets and discovered cocaine.

The lower court held the search invalid. The court reasoned that the search of the pockets of the defendant's jacket was barred because by seizing the jacket the police gained "exclusive control" of its contents and, therefore, no further search was justified. *People v. Belton*, 50 N.Y.2d 447, 451, 407 N.E.2d 420, 422 (1980). This Court rejected the lower court's reasoning stating, "under this fallacious theory no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.'" 453 U.S. at 461, n.5. Accordingly, the Court held that the search did not violate the fourth amendment because it was reasonable.

This Court defined "container" as, "any object capable of holding another object . . . [including] luggage, boxes, bags, clothing and the like." *Id.* at 461, n.4. The Court noted that, "these containers will sometimes be such that they could hold neither a weapon nor evidence for which the suspect was arrested." *Id.* at 461. Nevertheless, the Court concluded that such containers are subject to search incident to a lawful custodial arrest because the

authority to search derives from the fact of the lawful arrest. *Citing, United States v. Robinson.*

In *United States v. Ross*, 50 U.S.L.W. 4580 (June 2, 1982), this Court discussed the pre-arrest warrantless search of automobiles. Although the case did not confront the question of search incident to arrest, it did address court-fashioned distinctions among containers subjected to lawful search. The Court stated that once a reasonable search is undertaken, such distinctions, "must give way to the interest in prompt and efficient completion of the task at hand." *Id.* at 4586-87. The Court reasoned:

> This rule applies equally to all containers, . . . a constitutional distinction between "worthy" and "unworthy" containers would be improper. Even though such a distinction perhaps could evolve in a series of cases in which paper bags, locked trunks, lunch buckets and orange crates were placed on one side of the line or the other, the central purpose of the Fourth Amendment forecloses such a distinction.

Id. at 4587.

The search of respondent's purse was reasonable and therefore, did not offend the fourth amendment. His lawful arrest authorized a full search of his person and containers within his possession as a search incident to arrest.

III.

THE SEARCH OF RESPONDENT'S PURSE WAS A VALID INVENTORY OF THE EFFECTS OF A PERSON IN POLICE CUSTODY AS THE RESULT OF A LAWFUL ARREST.

Police may inventory the personal effects of an individual in custody as the result of a lawful arrest. The Appellate Court of Illinois erred in determining that the police could not conduct an inventory search of respondent and his personal effects including his purse.

A. The Lawful Arrest Of Respondent Authorized The Full Inventory Search Of His Personal Effects.

The authority to conduct an inventory search, like the authority to conduct a search incident to arrest, derives from the fact of lawful arrest. *United States v. Robinson, supra; United States v. Edwards, supra. See also,* 2 W. LaFave, *Search and Seizure, A Treatise on the Fourth Amendment,* 302-09 (1978). The inventory may consist of a thorough inspection of items in the possession of the arrestee at the place of detention. "It is customary for the booking inventory to involve an item-by-item examination of everything in an arrestee's pockets or otherwise on his person, including looking into his wallet or into containers on the person; it may even extend to a strip search." 2 W. LaFave, *supra* at 307.

Although the arrest establishes the authority to conduct an inventory, this Court has recognized three interests advanced by such a search: (1) protection of an arrestee's property while he is in jail; (2) protection of the police from groundless claims that they have not adequately safeguarded the defendant's property; and (3) security of the detention facility by preventing the introduction therein of objects which could be used to attempt an escape or by which harm might be done to some prisoner. *South Dakota v. Opperman,* 428 U.S. 364, 369 (1976). Professor LaFave suggests an additional interest advanced is the ascertainment or verification of the identity of the person being incarcerated. *See,* 2 W. LaFave, *supra* at 307.

Some lower courts, including the Appellate Court of Illinois in this case, have held that a full inventory of an arrestee's belongings violates the fourth amendment if the interests advanced by an inventory could be protected without a complete item-by-item search of the arrestee's personal effects. *See, e.g., People v. Helm,* 89 Ill.2d 34, 431

N.E.2d 1033 (1981); *State v. Gelvin*, 318 N.W.2d 302 (N.D. 1982).[1] This approach imposes unrealistic requirements on the police officers who must conduct inventories daily. It requires that the police determine whether every inventory search they conduct fulfills each of the interests traditionally advanced by such searches. This Court has refused to require police to engage in such a complex analysis. In *New York v. Belton*, the Court explained the necessity for clear-cut rules governing police conduct. Quoting one commentator, the Court stated:

> 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be literally impossible of application by the officer in the field.'

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[1] In *People v. Helm*, Justice Ward's dissenting opinion points out the illogic of this analysis, stating:

> If we were interested only in reducing the intrusiveness of inventory searches, while barring weapons and contraband from the interior of the jail, the practice of having persons under arrest empty pockets, turn over wallets and the like for purposes of inventory could be abolished. Instead pants, coats and other clothing and property could be sealed in garment bags and jail clothing provided. Pockets and wallets may contain possessions that are as private in character as possessions found in purses. The absurdity, however, of such a procedure is reflected in the practical comment of the court in *People v. Walker* (1975), 58 Mich. App. 519, 525, 228 N.W.2d 443, 446: "It would be naive and pointless to assume that law enforcement officials may store an arrestee's personal effects without first determining what it is they are inventorying."

453 U.S. at 141, *quoting* LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S.Ct. Rev. 127, 141 (1974). The decision of the Appellate Court of Illinois requires that police engage in a free form balancing of complex issues and policies each time they inventory a defendant's belongings. Accordingly, the decision obscures the central purposes of the fourth amendment and confuses the intent of the exclusionary rule.

The holding of the Appellate Court of Illinois, moreover, fails to recognize that the validity of a search depends upon whether the police had authority to search and not on whether a particular search fulfills the interests traditionally advanced by that type of search. This Court made that clear in *United States v. Robinson*, when it noted that the discovery of weapons and contraband are interests advanced by a search incident to arrest, but held that such a search is valid even if the police do not suspect that they will find weapons or contraband. The Court reasoned:

> A custodial arrest based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to arrest requires no additional justification.

414 U.S. at 223. Thus, whether a particular inventory protects the interests traditionally advanced by such a search is irrelevant to a determination of the reasonableness of the inventory. The lawful arrest of an individual authorizes the full inventory of his belongings.

B. The Inventory Of Respondent's Personal Effects Protected The Interests Traditionally Advanced By An Inventory Search.

The inventory process benefits both the police and the defendant. Four primary interests are advanced by an in-

ventory search: protection of the owner's property while it remains in police custody; protection of the police from false claims of stolen or lost goods; protection of the security of the police and the detention facility; and confirmation or ascertainment of the identity of the defendant. The inventory of respondent's personal effects, including his purse, was necessary to protect those four interests.

The Kankakee police inventoried respondent's belongings in his presence, in accordance with standard departmental procedures. (A. at 12). The inventory occurred when it was determined that respondent would remain in police cusody; after the arrest but before he was taken to his jail cell for the night. By ascertaining and cataloguing respondent's possessions, the police were able to provide the proper security for them. The inventory procedure allows police to compare their record with the items returned to a pre-trial detainee upon his release to ensure that he receives all that is rightfully his and to prevent the detainee from claiming that the police failed to return something which he possessed at the time of his detention.

The inventory search makes certain that pre-trial detainees bring no weapons, contraband or items, which could facilitate escape, into the detention facility. This Court recognized the importance of a thorough search for this purpose in *Bell v. Wolfish*, 441 U.S. 520 (1979), when it upheld visual body cavity searches of pre-trial detainees and prisoners at the New York Metropolitan Correctional Center. The Court reasoned that so intrusive a search could be allowed because the security of a detention facility is of such great importance. The inventory also allows police to verify a pre-trial detainee's identity by comparing the identification information provided by the detainee with any additional information found among his personal effects. The inventory search of

respondent, pursuant to standard procedures, ensured the protection of the interests traditionally advanced by an inventory.

A pre-trial detainee retains no expectation of privacy which justifies limiting a search. "Given the realities of institutional confinement, any reasonable expectation of privacy that a detainee [retains] necessarily would be of diminished scope." *Bell* at 557.

The police maintained a good faith belief that they acted reasonably and within the law in applying the standard inventory procedure to respondent, a lawfully arrested pre-trial detainee. The evidence they discovered, therefore, should not be suppressed. The purpose of the exclusionary rule is deterence of unlawful police conduct. *Mapp v. Ohio*, 367 U.S. 643 (1961). That purpose is not served by the suppression of evidence in this case. In *Michigan v. DeFillippo*, 443 U.S. 31 (1979), this Court stated:

> Police are charged to enforce laws until and unless they are declared unconstitutional. The enactment of a law forecloses speculation by enforcement officers concerning its constitutionality—with the possible exception of a law so grossly and flagrantly unconstitutional that any person of reasonable prudence would be bound to see its flaws. Society would be ill-served if its police officers took it upon themselves to determine which laws are and which are not constitutionally entitled to enforcement.

Id. at 38.

Similarly, in this case, society would be ill-served if the police were required to engage in an ad hoc balancing, considering the time from arrest to inventory and the container searched, each time they conduct a standard inventory of the belongings brought by a lawfully arrested person to the place of detention. Respondent's lawful

arrest established the authority of the police to search him and his personal effects at the place of detention. Accordingly, the search was reasonable and did not violate the fourth amendment.

CONCLUSION

For the foregoing reasons the decision of the Appellate Court of Illinois should be reversed.

Respectfully submitted,

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